IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

TUESDAY, THE 27TH NOVEMBER 2007 / 6TH AGRAHAYANA 1929

CRL.A.No. 490 of 1999()

SC.104/1989 of I ADDL. SESSIONS COURT, KOLLAM

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APPELLANT:

SANKARAN, S/O AYYAPPAN, SANKARAMANGALATHU VEEDU, MUTHUKULAM VADAKKEMURI, MUTHUKULAM VILLAGE, DO. TALUK.

BY ADV. SRI.K.RAMAKUMAR

RESPONDENTS:

STATE OF KERALA REPRESENTED BY THE CRIME BRANCH C.I.D. KOLLAM.

BY PUBLIC PROSECUTOR SRI.AMJED ALI.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 27/11/2007, ALONG WITH CRA NO. 501 OF 1999 CRA NO. 502 OF 1999 CRA NO. 503 OF 1999, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A.K. Basheer, J.

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2. C.B.C.I.D., Quilon had charge sheeted 43 accused in connection with Crime No.46/83 registered by Sakthikulangara Police alleging commission of offences punishable under Sections 120 B, 489 A to D and 420 r/w Section 34 IPC and also under Section 3 r/w Section 25 (1) (a) and (2) and Section 20 r/w Section 27 of the Indian Arms Act. The charge levelled against the accused was that during 1982-83 accused Nos.1 to 7, 9, 10, 13, 14 and 21 had committed criminal conspiracy at various lodges and hotels in Tamilnadu and Alappuzha and also at the residence of accused No.4 at Kollam on several occasions for the purpose of printing and distribution of counterfeit Indian currency note of 100 rupee denomination. Accused No.4 had invested Rs.41,000/-, accused No.21 Rs.45,000/-, accused No.3 Rs.3,000/- and accused No.6 had invested invested Rs.1,000/- for this purpose. It was further alleged that necessary material and paraphernalia were collected by the accused and currency notes of 100 Rupee denomination worth Rs.36,00,000/- were printed and these currency notes were distributed subsequently.

3. As mentioned earlier, altogether 43 accused were arraigned in the case, out of which the case against accused Nos.6, 11, 21, 34 and 38 was split up. It is on record that accused No.1, 16, 17, 30 and 33 passed away without facing trial. It is also brought to my notice that the committal proceedings in respect of accused Nos.3, 11, 18, 22, 28 and 29 are in progress and trial against accused Nos.6, 11, 21, 34 and 38 is about to commence.

Out of the remaining accused who faced trial, the appellants, eight in number, were found guilty. They have preferred these appeals challenging the order of conviction and sentence.

4. The prosecution had examined PW1 to PW71 and Exts.P1 to P107 and M.O's 1 to 63 were marked on its side. Though no witness was examined on the side of the defence, Exts.D1 to D8 were marked.

5. The trial court after an elaborate consideration of the oral and documentary evidence found the appellants in these cases guilty and accordingly they were convicted and sentenced under Sections 489-C and D only. They were not found guilty of the other offences alleged against them. The other accused who faced trial were acquitted.

Crl.A.502/1999:

6. Appellants in this appeal are accused Nos.9, 14, 20, 23 and 37. Accused Nos. 9, 23 and 37 were found guilty under Section 489-C and they were convicted and sentenced to undergo Rigorous Imprisonment for 5 years each and to pay a fine of Rs. 10,000/- each and in default to undergo Simple Imprisonment for 1½ years. A14 was found guilty under section 489-D. He was awarded the same sentence referred to above. A20 was found guilty under Section 489-C and D and she was sentenced to undergo Rigorous Imprisonment for 5 years each under the two counts and also to pay a fine of Rs.10,000/- each and in default to suffer Simple Imprisonment for 1 ½ years each.

7. As mentioned earlier, the case of the prosecution was that accused Nos.1, 7, 9, 10, 13, 14 and 21 had committed criminal conspiracy, meeting at several places both in Tamil Nadu and Kerala on various occasions and made preparation for printing and distribution of counterfeit Indian currency of the denomination of Rs.100/- during 1982-83. It may at once be noticed that the trial court found that the prosecution had failed to establish the charge under section 120B IPC against any of the accused. So all of them were acquitted of the above charge.

8. The case against A9 was that he was found in possession of 9 fake 100 rupee notes on April 17, 1984. Prosecution had relied on the evidence of Pw.32 and Pw.71 for this purpose and has also pressed into service Ext.P50 mahazar, on the basis of which the currency notes were seized. Pw.32 who had allegedly signed in Ext.P50 mahazar turned hostile to the prosecution. He deposed before the court that he did not know A9, nor had he seen him on the day when the alleged recovery was effected. He further stated that he had signed in a blank white paper. He further asserted that he was not aware that nine 100 rupee notes were recovered from A9. Pw.71 the Investigating Officer stated before the court that he had arrested A9 on April 17, 1984 at Bhoothamkara and had seized M.O.56 series notes (9 in number) under Ext.P50 mahazar. The court below accepted the testimony of PW.71 even in the absence of any corroborative evidence that MO.56 series currency notes were recovered from the possession

of A9, for the reason that PW.32 had admitted that he had signed in a blank piece of paper on the day when the alleged recovery was effected. The court below further took the view that the fact that A9 had retained the above currency notes with him clearly revealed his intention to use them.

9. I have been taken through the testimony of PW.71, who had conducted the major part of investigation in the case , with specific reference to the recovery effected from A9. I am afraid the evidence of PW.71 to the extent it relates to recovery of MO.56 series from A9 does not inspire any confidence, particularly in the absence of any corroborative evidence in support thereof.

10. In this context it may have to be mentioned that in Ext.P50 mahazar it is stated that A9 was arrested at about 2 p.m. on April 17, 1984 on the road in front of the toddy shop of Rajappan Pillai (Pw.32). The mahazar does not reveal where it was prepared though it was mentioned at the top of it that it was prepared at Bhoothamkara at 6.30 p.m. There is also no explanation why no other witnesses who had allegedly signed Ext.P50 mahazar was examined. In short, I am not at all impressed with the manner in which Ext.P50 mahazar was prepared. Therefore I am unable to concur with the view taken by the trial court and place any reliance on the said mahazar. There is no other piece of evidence to implicate A9 in the case. More importantly, no materials have been brought to my notice to show

that A9 was in conscious possession of the counterfeit currency notes, with the knowledge that they were counterfeit. Therefore the order of conviction and sentence passed against A9 is liable to be set aside.

11. The prosecution case against A14 was that articles/equipments like lens, stand, lens career, adjuster, enlarger etc. (M.O.49 series) were recovered from a building at Thrithangal on the basis of the information furnished by him. PW.71, the Investigating Officer had prepared Ext.P73 mahazar which was proved through Pw.55. Exts.P94 and P95 kychit and mahazar prepared in connection with the recovery effected from the same building were also relied on by the prosecution in the case against A14. PW.55, Head Constable supported the prosecution case. He stated before the court that the building in question was taken on rent by the father of A14. No evidence was adduced by the prosecution to show that these articles were in fact utilised for the purpose of counterfeiting. PW.67 who was stated to be the photographer had stated before the court that he had examined M.O.49 series articles/equipments. He stated that he had not assembled the various equipments to see whether they were in working condition. However he asserted that they were in working condition.

12. Having perused the evidence of Pws.55 and 67, I am not satisfied that the prosecution has succeeded in establishing that MO.49 series equipments were in fact used for the purpose of

counterfeiting currency notes. The evidence of Pw.67 in particular is too sketchy and unreliable. The evidence of Pw.71 also does not help the prosecution in any manner. Similarly, Ext.P73 mahazar also does not inspire any confidence. Therefore I am satisfied that A14 is entitled to get the benefit of doubt, particularly since it is the admitted position that the building was let out to the father of A14. No other evidence was adduced to establish the connection of A14 with the building. No attempt was made by the prosecution to produce any document with regard to the above lease arrangement. In that view of the matter also, the order of conviction and sentence passed against A14 is also liable to be set aside.

13. The prosecution case against A23 was that he had purchased textile items, tape recorder, two watches etc. for a sum of Rs. 900/- from Pw.19, as introduced by Pw.68. Pw.19 admitted that he was dealing with foreign goods and that he had received 90 currency notes of 100 rupee denomination from A23. He further stated that he had handed over the notes to the Police. The other two witnesses who were examined by the prosecution to prove the charge against A23 were PW.36 and Pw.40. I have gone through the oral testimony of Pw.19 and 36, the non-official witnesses. It is significant to note that Pw.19 had admitted in his testimony that the counterfeit notes were handed over to him by one Abdul Rasheed, the owner of Thashkent Hotel, and not A23. Curiously, this Abdul Rasheed was not examined by the

prosecution. Moreover, there is no proper explanation from Pw.19 with regard to the delay in handing over the currency notes to the Police. He further admitted that he had not seen A23. A careful perusal of the evidence of Pw.19 does not inspire any confidence at all. In my view, the trial court was not justified in relying on the evidence of Pw.19. Same is the case of the oral testimony of Pw.36. This witness had deposed before the court that on March 4, 1984 he had gone to an arrack shop at Chadayamangalam and purchased two bottles of arrack and paid a 100 rupee note. According to this witness the said 100 rupee note was handed over to him by A23 who wanted change for the same. Pw.36 stated that he had given two 50 rupee notes to A23 and collected one 100 rupee note. Later in the evening he came to know that the 100 rupee note which he had given at the arrack shop was counterfeit. Curiously in chief examination Pw.36 stated that officers attached to the Crime Branch had shown A23 to him later and it was thus that he had identified him. The version given by Pw.36 in cross-examination about the 100 rupee note allegedly received by him from A23 is quite interesting. He stated that he had kept the 100 rupee note given to him by A23 separately though he had other 100 rupee notes with him. After going through the evidence of Pw.36 extensively, I am unable to place any reliance on the same. Some contradictions (Exts.D4, D5 and D6) in the version given by this witness were also marked in the case. Therefore I have no hesitation to hold that the court

below was in error in placing reliance on the evidence of Pw.36 as well. Pw.40 who was the Sub Inspector of Police during the relevant period had only registered the FIR against A23. More importantly, Ext.P57 mahazar does not show where it was prepared. In this context it may also be mentioned that the charge witness who had lodged Ext.P55 FIR in the case against A23 was not examined before the court, though the case of the prosecution appears to be that the manager of the arrack shop had taken the 100 rupee note collected from Pw.36 to the Bank on the next day and it was at that time that it was revealed that it was a counterfeit note. I am afraid the court below was not justified in overlooking all these flaws in the prosecution case while holding A23 guilty of the offence. Therefore the order of conviction and sentence passed against A23 is also liable to be set aside.

14. The case against A37 was that he was found engaged in exchanging a counterfeit 100 rupee note near Jose Junction, Ernakulam. on February 2, 1984 at about 5.30 pm. Pw.29, a Detective Inspector attached to CB CID, Ernakulam deposed before the court that he had apprehended and arrested A37 and recovered two 100 rupee notes from his body. Ext.P44 is stated to be the mahazar prepared by Pw.29 at the time of recovery. But curiously no witness who had allegedly witnessed the recovery was examined before the court. In cross-examination Pw.29 admitted that he had not stated that he had recovered the note from the pocket of the accused. Thus there was only the

uncorroborated version of Pw.29 in support of the prosecution case. Pw.30 had only registered the crime against A37. It was on the basis of the above evidence that the court below had found A37 guilty of the offence under section 489-C. In my view, the court below was not justified in holding this accused guilty on the basis of the above scanty and unsatisfactory evidence. Therefore the order of conviction against A37 is also liable to be set aside.

15. The case against A20 is that she along with A3, A18 and A19 was found arranging and stacking the counterfeit notes in a building in Mannar Panchayat. The prosecution case was that 663 counterfeit notes of 100 rupee denomination, apart from printing sheets, cutting instruments, Fevicol, brush etc. were recovered on February 16, 1984 at 8 p.m. under Ext.P19 search list.

16. Learned Public Prosecutor submits that A18 is absconding. A19 who was found guilty by the trial court has preferred Crl.A. 501/1999. Therefore the said appeal is also taken up for consideration along with the case of A20.

17. The prosecution has relied on the evidence of Pws.15, 16, 21 and 43 to substantiate the charge under Section 489-C and D against these two accused (A19 and A20). Pw.15 stated before the court that during 1982 he was working as the Circle Inspector of Police at Mannar Police Station. On February 16, 1984 he had conducted search of a building situated within the limits of Mannar Panchayat, pursuant to receipt of information

that counterfeit currency was being printed in that building. In the course of the search, 663 counterfeit currency notes of 100 rupee denomination were seized. A cutting instrument, Fevicol tin, brush screw driver etc., apart from printed sheets with the design of 100 rupee currency were also recovered. On entry of the building it was noticed that A3, A18, A19 and A20 were arranging and stacking the 100 rupee notes. Pw.15 further stated that M.O.29 series currency notes were recovered from the building under Ext.P19 search list. Other instruments/articles recovered from the building were also seized (M.O.28 to M.O.33) Pw.16 had witnessed the search and signed in Ext.P19 search list.

18. Having perused the evidence of Pws.15 and 16 carefully, I am of the view that the trial court was justified in relying on the testimony of these two witnesses. The defence has not succeeded in bringing out any material inconsistency or contradiction in the testimony of these witnesses. Therefore the trial court is justified in holding that A19 and A20 were guilty of the offence alleged against them under Section 489-C and D IPC. Therefore no interference is warranted against the order of conviction passed against these two accused.

Crl.A.490/99:

19. Accused No.32 has preferred this appeal against the order of conviction and sentence passed against him under Section 489-C IPC. The case against this accused is that 4 counterfeit currency notes of 100 rupee denomination were recovered from

his possession on September 27, 1984. Prosecution relied on the evidence of Pws.52, 53 and Pw.71. Pw.71 the Investigating Officer deposed before the court that he had recovered counterfeit currency notes from the accused under Ext.P71 mahazar. Pw.52 who had allegedly witnessed the seizure turned hostile to the prosecution. He stated before the court that he had not seen the Police recovering any currency notes nor had he signed in the seizure mahazar. But Pw.52 admitted that the signature seen on Ext.P71 was that of his. He was declared hostile. But the prosecution did not succeed in bringing out anything from his cross-examination. Pw.53 who was the other witness who had allegedly attested Ext.P71 seizure mahazar also turned hostile. He stated that he had not seen any recovery of counterfeit notes.

20. I have been taken through the evidence of Pw.71, the Investigating Officer, in relation to the case against A32. I have also perused Ext.P71 mahazar carefully, which does not reveal the place at which it was prepared. I am not satisfied that the court below was justified in relying on the uncorroborated evidence of Pw.71, the Investigating Officer, to enter a finding that A32 was guilty of the offence alleged under Section 489-C IPC.

Crl.A.503/1999:

21. This appeal is preferred by A35 against the order of conviction and sentence passed against him under Section 489-C IPC. The prosecution case was that the appellant/accused had

tendered a counterfeit 100 rupee note at a toddy shop in Ponnamveli near Cherthala on October 23, 2004. The salesman who had received the note from the accused had handed it over to the Manager of the toddy shop who suspected it to be counterfeit. He informed the Police immediately. But, by the time the Police party reached the toddy shop, the accused and his friends have left the scene. The prosecution alleged that the 100 rupee note was seized by the Police on the same day itself as evidenced by Ext.P79 mahazar in the presence of witnesses, one of whom was the salesman (Pw.57). The accused was apprehended on the next day (24/10/1984) allegedly from the sea shore and 9 more counterfeit currency notes were allegedly recovered from the body of the accused under Ext.P80 mahazar. The notes were marked as M.O.50 and 51 series. Pw.57, the Manager of the toddy shop deposed before the court that he had not signed in the mahazar. But he admitted that he had signed on a paper in the police station. He further admitted that his salesman (Pw.59) had handed over to him one counterfeit 100 rupee note. He had informed the Police because of suspicion. He further stated that he had not produced the counterfeit note to the Police. Pw.58 who had arrested the accused deposed before the court that he had effected the arrest on the seashore near a lamp post. He had also effected recovery of nine 100 rupee notes under Ext.P80 mahazar from the body of the accused. Pw.59, the salesman of the toddy shop did not support the prosecution. Therefore he was declared

hostile. He stated that he could not identify the accused who had come to the toddy shop. He also asserted that Police had not recovered the counterfeit note from the toddy shop. Pw.60 also did not support the prosecution case. He stated that he did not know the accused and therefore he was declared hostile. In short, in the case as against A35, what remained was the evidence of Pw.58, the Police Officer who arrested the accused and allegedly effected recovery of nine 100 rupee counterfeit notes (M.O.51 series). While analysing the evidence available on record against A35, the court below took the view that the circumstances brought against him would show his involvement. I am afraid the view taken by the court below cannot be sustained at all.

22. Learned counsel for the appellants have invited my attention to a few decisions in support of their contention that it is the bounden duty of the prosecution to prove that the accused had kept in possession counterfeit notes with the knowledge that they were forged or counterfeit .(See ***Vijayan v. State of Kerala (2001 (2) KLT 951), Uma Shanker v. State of Chhattisgarh (2001(3) KLT 681(SC)), AIR 1979 SC 1705, Madan Lal Sarma v. State (1990 Crl.L.J. 215).***

23. In the result Crl.A.No.490 and 503 of 1999 are allowed. The appellants are acquitted. Bail bonds executed by them are cancelled and their sureties are discharged.

24. Crl.A.No.502/1999 is allowed in part. Appellants 1, 2, 4 and 5 (accused Nos.1,2,4 and 37) are acquitted. Their bail

bonds are cancelled and sureties are discharged. The order of conviction passed against appellant No.3 (accused No.20) is confirmed. However, substantive sentence of imprisonment shall be restricted to the period of imprisonment already undergone by her. She shall pay fine of Rs.25,000/- and in default shall suffer Simple Imprisonment for 6 months.

Crl.A.501/99 allowed in part. The order of conviction passed against the appellant is confirmed. However substantive sentence of imprisonment shall be restricted to the period of imprisonment already undergone by him. He shall pay fine of Rs.25,000/- and in default shall suffer Simple Imprisonment for 6 months.

A.K. Basheer
Judge.

an.

A.K. Basheer, J.

Crl.A.Nos.490,501,502 & 503/1999

Judgment

27/11/2007.